

REMARKS:

Regarding the rejection under 35 USC 112 of claims 1,4,5,7,11, 13 and 14:

The presently amended claims are believed to address and overcome the grounds of rejection entered by the Office in the Final Rejection. The applicants thank the Examiner for her favorable remarks in the *Advisory Action* with respect to these 35 USC 112 rejections.

Regarding the rejection under 35 USC 103(a) of all pending claims in view of US 5728667 to Richter:

The applicants respectfully traverse the rejection which has been maintained by the Office based on the Richter prior art document.

As has been previously discussed, the Richter compositions are generally directed towards a “germicidal light-duty aqueous dishwashing detergent composition”. Richter’s dishwashing compositions necessarily include “a quaternary ammonium germicidal compound, an anionic alkyl ether carboxylate, a further nonionic surfactant, a suds boosting agent, as well as further optional additives”. One of appropriate skill in the art at the outset would realize that each of these are *essential* constituents, namely that all embodiments of Richter’s dishwashing detergents contain each of: a quaternary ammonium germicidal compound, an anionic alkyl ether carboxylate surfactant, and a further nonionic surfactant. Clearly, this prior art document’s formulations can be distinguished as necessarily requiring a carboxylates, whereas the present invention requires a glycoside surfactant which, is not described as being essential to the Richter compositions.

The Office has stated in the Final Rejection that in it’s view Richter’s recitation of glycosides amongst Richter’s description of a wide range of deterative surfactants which might be optionally included is sufficient and would encompass the applicant’s presently claimed invention. Again, the present applicants strongly disagree and again point out that nowhere in the Richter specification is there any teaching or any suggestion whereby the skilled practitioner would select amongst he many possible nonionic surfactants with the *intent* of providing a useful mitigating effect to the quaternary ammonium compound present in those compositions. Richter’s widespread recitations fails to make up in depth

(viz., identification of polyglycosides to provide a mitigating effect) what it provides in breadth (viz., a sweeping recitation of nonionic surfactants.)

The attention of the Office is directed to the *Declaration of Robert Zhong Lu under 37 CFR 1.132* which has been previously transmitted to the Office, on 07.July.2000.

In that *Declaration* are demonstrated that various compositions which include a quaternary ammonium compound in conjunction with various combinations of nonionic surfactants. The nonionic surfactants include various classes of alcohol ethoxylates (Neodol®, Genapol®, PolyTergent®), nonionic block copolymer surfactants (Pluronic®) as well as alkylpolyglycosides (Glucopon®). Each of these are recited in Richter's widespread recitation of nonionic surfactants, and absent any specific teaching as to beneficial mitigating effects, each of these would also be equally likely to be used in a quaternary ammonium compound containing composition. However, as a comparison of the results of Table 3 illustrates, the effects of the inclusion of certain nonionic surfactants lead to surprising and unexpected results which could not in any way be discerned from the Richter reference, or from the general prior art. Clearly the *Declaration* illustrates that the important and significant results obtained require a foreknowledge of the properties of alkylpolyglycosides and their beneficial effects in order to produce the present inventive compositions, and that the prior art, and Richter fail to provide the requisite teaching or even the merest hint or suggestion to identify and utilize alkylpolyglycosides in a manner which becomes apparent only after the present inventor's discovery.

As to the proper standard of review, the Office is respectfully reminded of the Court's statement that

"The PTO and the minority appear to argue that it would always be obvious for one of ordinary skill in the art to try varying every parameter of a system in order to optimize the effectiveness of the system even if there is no evidence in the record that the prior art recognized that particular parameter affected the result. As we have said many times, obvious to try is not the standard of 35 USC 103 [cit.] Disregard for the unobviousness of the results of 'obvious to try' experiments disregards the 'invention as a whole' concept of Sec. 103, [cit.] and overemphasis on the routine nature of the data gathering required to arrive at appellant's discovery, after its existence became expected, overlooks the last sentence of Sec. 103. In *in re Aller*, (105 USPQ 223 (1955)), the court set out the rule that the discovery of an optimum value of a variable in a known process is

normally obvious. We have found exceptions to this rule in cases where the results of optimizing a variable, which was known to be result effective, were unexpectedly good. [cit.] This case, in which the parameter optimized was not recognized to be a result-effective variable, is another exception." In re Antoine 195 USPQ 7, pp. 8-9 (CCPA, 1977)

The Office is also respectfully reminded of the CAFC's decision in Gillette Co. v. S.C. Johnson & Son Inc. 16 USPQ2d 1923 (CAFC, 1990) wherein the Court noted that determination of obviousness under 35 USC 103 requires an analysis of claimed invention as a whole, and focusing on obviousness of substitutions and differences instead of on invention as whole, is legally improper way to simplify that determination.

Similarly, nothing in the prior art Richter reference indicated to the skilled practitioner any "result-effective variable" amongst the myriad nonionic surfactants. Further, nothing in the prior art Richter reference suggests or identifies specific surfactant and combinations of surfactants which would be useful to providing a mitigating effect. This is particularly relevant as Richter is silent as to the issue of mitigation. This conclusion is further significant when a fair reading of the Richter reference reveals that Richter focused upon providing effective "foaming" while preserving the germicidal efficacy. Such technical effects do not necessarily concern the present inventors, and thus there would be little impetus for the skilled practitioner to view the Richter reference with the intent of finding anything which would suggest mitigation or the identification of a constituent in order to provide mitigation of the quaternary ammonium compound. Indeed, this is further supported in reviewing Richter's formulations. On Richter's Table 1, each and every formulation includes his essential constituents but none demonstrate a glycoside nonionic surfactant. Richter does not demonstrate any composition which is particularly proximate to those according to the present inventors. Richter also does not teach anything useful to the skilled practitioner regarding mitigation.

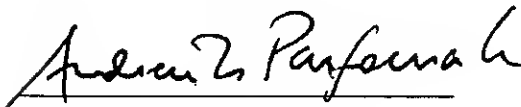
As such, it is not believed that the Richter composition can be properly viewed as teaching or suggesting the compositions according to the present invention, particularly in view of the *Declaration* previously submitted.

Reconsideration of the propriety of the rejection based on U.S. Patent No. 5,728,667 to Richter, and withdrawal of the rejection, is respectfully requested.

Reconsideration of the bases of rejection in view of the amendments and remarks entered herein is respectfully requested. As the next communication, a *Notice of Allowance* is solicited.

Should the Office believe that telephonic communication would advance the prosecution of the instant application, they are invited to telephone the undersigned at the number given below.

Respectfully Submitted:



Andrew N. Parfomak, Esq.
Reg.No. 32,431
Tel: (212) 641-2285

Fish + Richardson P.C.
45 Rockefeller Center
Suite 2800
New York, N.Y. 10111

Enclosures - as indicated

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